IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6412 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Ord : NO

JJJJ

whereas the wife of the petitioner was also holding certain lands situated at Ahmedabad. The petitioner as well as his wife, both filed separate form 1 under section 6 (hereinafter referred to as "form") before the respective concerned competent authorities. So far as the form filed by the wife of the petitioner is concerned the competent authority at Ahmedabad passed an order dated 22.6.83 whereby it was recorded by the competent authority at Ahmedbad that the exemption has been granted to the property situated at Odhav which is being used for industrial purpose and therefore the said competent authority at Ahmedabad did not consider the said holding for the purpose of computation. It is also recorded by the competent authority at Ahmedabad that the wife of the petitioner is holding certain lands which is a constructed property and the proportionate share of the wife of the petitioner is taken into consideration for the purpose of computation. However, it was found by the competent authority at Ahmedabad that since the total holding is 929 Sq.Mtrs the same is not in excess of prescribed limit and therefore no land is required to be declared as surplus land. Copy of the said order of the competent authority at Ahmedabad is produced by the petitioner at annexure "C" to the petition. It appears that thereafter the competent authority at Rajkot processed the form No.1 filed by the petitioner wherein holding of his wife was shown and the land held by the petitioner was shown since while considering one unit holding of husband and wife are to be taken into consideration as per the provisions of Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act"). The perusal of the order of the competent authority at Rajkot shows that the opportunities were given to the petitioner to submit the evidence in support of objections filed. However, from the record it appears that the petitioner did not produce the final decision of the competent authority at Ahmedabad, dated 22.6.83 in respect of the holding of his wife. Ultimately, the competent authority at Rajkot considered the holding of the wife of the petitioner as it is and it is observed by the competent authority at Rajkot that since no evidence is produced relating to the exemption of the property situated at Odhav, Ahmedabad and regarding the construction over the property situated at Kalupur and Paldi at Ahmedabad no evidence was produced to show that they were in existence prior to 1976 and therefore all the holdings of the petitioner as well as that of the wife of the petitioner were taken into consideration and the lands at Rajkot admeasuring 2848.68 Sq.mtrs as well as the land situated at Odhav, Ahmedabad were declared surplus. Against the said order of the competent

authority at Rajkot the petitioner preferred appeal before the Urban Land Tribunal and it appears that before the Urban Land Tribunal copy of the order dated 22.6.83 passed by the competent authority at Ahmedabad was produced by bringing to the notice of the tribunal. However, the Urban land Tribunal proceeded on the basis that since no such evidence in respect of exemption of the property situated at Odhav,Ahmedabad is produced before the competent authority at Rajkot the same can not be considered. Similarly, the constructed property situated at Ahmedabad is concerned, it was observed by the tribunal that no such evidence is produced to show that the construction was prior to 1976 and therefore the same is also not considered. The tribunal proceeded on the basis that since that no evidence and material was not produced the contention of the appellant-petitioner can not be considered and therefore ultimately for the reasons recorded in the order dated 30.11.1987 the tribunal dismissed the appeal against which the present petitio is preferred by the petitioner.

3. It is conceded by the learned counsel for the petitioner that they are not raising dispute regarding the repealing of the Act and this court may examine the matter on the basis that the Act is applicable since the question of handing over of possession or recovering the possession by the authority is highly disputed by the petitioner as well as the respondent. Therefore, the present case is decided on the basis that the provisions of the Act are applicable as conceded by both the parties.

4. Mr.Sharma has raised the contention that the copy of the draft statement is not served to the wife of the petitioner though it was shown in form 1 that certain properties are held by his wife. He has also raised the contention that so far as the properties situated in Kalupur and Paldi at Ahmedabad are concerned they are constructed properties and in view of the judgment of the Apex Court in the case of Smt.Meera Gupta vs State of West Bengal reported in AIR 1992 SC 1567 they are required to be excluded for the purpose of computing the total holding as per the Act. He has also raised the contention that so far as the property situated in Odhav at Ahmedabad is concerned exemption was granted by the State Government under section 20 of the Act. Therefore also the properties are required to be excluded for the purpose of computing. In furtherance to his contention he has also drawn the attention of this court to the effect that when the competent authority at Ahmedabad

accepted both the positions, namely, that there are constructions over the property situated in Kalupur and Paldi and that the exemption has been granted in respect of property situated in Odhav at Ahmedabad the tribunal ought to have considered the said aspects and should not have ignored the order dated 22.6.83 passed by the competent authority at Ahmedabad, more particularly, in view of provisions of section 7 of the Act.

5. I have heard the learned Asst.Govt.Pleader and considered the facts and circumstances and find that there is no substance in the contention raised by Mr.Sharma that the draft statement was required to be served upon the wife of the petitioner because the wife of the petitioner has neither preferred appeal nor has preferred writ petition before this court. The present petition is preferred by the petitioner only. I further enquired from Mr.Sharma as to whether the petitioner and his wife are staying separately, his answer was in negative. In that view of the matter it can be presumed that the wife of the petitioner must be aware of the proceedings before the competent authority at Rajkot and in any case when the competent authority at Rajkot declared the land belonging to the wife of the petitioner as surplus at any point of time she has not come forward challenging the said decision on the ground that she has not been heard by the competent authority at Rajkot before passing the order and therefore the first contention of Mr.Sharma that the mandatory procedure of serving draft statement is not followed deserves to be rejected.

6. The second contention of Mr.Sharma is that under section 7(1) of the Act there is an obligation cast upon the competent authority, namely, that when the lands are situated in the jurisdiction of the second competent authority, it is necessary to intimate the concerned competent authority and the computation is to be made in the manner as provided under section 7 of the Act . A perusal of the record shows that so far as the competent authority at Ahmedabad is concerned it is found that the properties situated at Kalupur and Paldi at Ahmedabad are constructed properties and the 1/3rd share of the wife of the petitioner is taken into consideration and the competent authority at Ahmedabad has further found that the property situated at Odhav at Ahmedabad is concerned the same is exempted by the State Government. However, in view of the judgment in the case of Mira Gupta (supra) the petitioner would be entitled to absolute exclusion of

the properties which are constructed properties prior to 1976. It appears that despite the said aspects were brought to the notice of the tribunal more particularly the aspects regarding the order dated 22.6.83 passed by the competent authority at Ahmedabad observing that the exemption has been granted for the property situated at Ahmedabad the tribunal restricted itself to refer to the record of the competent authority at Rajkot and has lost site of the order passed by the competent authority at Ahmedabad as well as it has also lost site of the mandatory requirements as provided under section 7 of the Act. Under the circumstances, since the tribunal has not considered the fact of holding of the wife of the petitioner in view of the order passed by the competent authority at Ahmedabad dated 22.6.83 it can be said that the tribunal has committed jurisdictional error in not considering the mandatory provisions of the Act as well as in totally ignoring the order dated 22.6.83 passed by the competent authority at Ahmedabad which is legal and valid and is not disturbed or reversed by any higher forum. Further, it will also be the case for the tribunal to consider that whether, in view of the judgment in the case of Mira Gupta (supra), the petitioner would be entitled to absolute exemption qua the property situated in Kalupur and Paldi at Ahmedabad which are held by his wife and the same, as per the petitioner, are constructed prior to 1976.

7. In the result, the order dated 30.11.1987 passed by the tribunal is quashed and the matter is remanded to the tribunal for reconsidering the matter afresh keeping in view the above observations made in this judgment. The tribunal shall decide the matter within a period of three months from the date of receipt of writ of this court. Till the tribunal decides the matter, both the parties are directed to maintain statusquo as per the terms of undertaking made before this court. Rule is made absolute to the aforesaid extent with no order as to costs.

18.1.2002 (JAYANT PATEL,J)